

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CALPINE CORPORATION, Complainant, v. INTERSTATE POWER AND LIGHT COMPANY, Respondent.	DOCKET NO. FCU-02-8
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**ORDER GRANTING MOTION TO DISMISS AND
DENYING REQUEST FOR WAIVER**

(Issued July 5, 2002)

On May 10, 2002, Calpine Corporation (Calpine) filed with the Utilities Board (Board) a complaint against Alliant Energy Corporation (Alliant), the parent company of Interstate Power and Light Company (IPL), a rate-regulated electric utility doing business in Iowa. Calpine is an independent power producer that owns 12,000 MW of electric generation and has 14,000 MW in construction.

Calpine in its complaint alleged that a request for proposals (RFP) process engaged in by Alliant for bids on a natural-gas generating plant was flawed because Alliant provided incomplete and uninformative information about the bid process and gave preferential treatment to Alliant's affiliate, IPL. IPL, on behalf of Alliant, filed an

answer and motion to dismiss on May 22, 2002. Calpine filed a response to the motion to dismiss on June 4, 2002.

Calpine's complaint revolves around alleged violations of the Board's competitive bidding rules contained in 199 IAC chapter 40. These rules were adopted pursuant to the authority of Iowa Code § 476.53 (2001 Supp.), which was enacted to "attract the development of electric power generating and transmission facilities within the state . . ." This statute provides that when defined new electric generation is constructed by a rate-regulated public utility, the Board, upon request, shall specify in advance, by order issued after a contested case proceeding, the ratemaking principles that will apply when the costs of the new facility are included in electric rates.

While the intent of section 476.53 is to encourage Iowa-built generation by rate-regulated utilities, this generation is not to be built at any cost. The impact on the utility's ratepayers must be balanced with the requested principles. Before determining the applicable ratemaking principles, the Board must make two findings pursuant to Iowa Code § 476.53(3)"c." One of these findings is relevant to Calpine's complaint.

The Board must make a finding that the utility has considered other sources for long-term supply and that the facility is reasonable when compared to other feasible alternative sources of supply. Under section 476.53(3)"c," the utility may satisfy these requirements "through a competitive bidding process, under rules adopted by the board, that demonstrate the facility . . . is a reasonable alternative to

meet its electric supply needs." In other words, compliance with 199 IAC chapter 40 provides a "safe harbor" for a utility to establish that its facility is reasonable when compared to other feasible alternatives. However, the utility is not required to use the competitive bidding rules and may satisfy the requirements of the statute in other ways.

There is some dispute as to whether the RFP in question here was conducted by Alliant or Alliant Energy Corporate Services, Inc., as agent for IPL. Calpine and Alliant present arguments on who should therefore be the party named in the complaint. Calpine and Alliant also dispute whether the complaint was timely filed pursuant to the rules.

These disputes are irrelevant to the Board's determination on IPL's motion to dismiss. The competitive bidding rules were not effective until May 8, 2002, after the competitive bidding process had been completed. Competitive bidding rules that were not effective cannot be used either by IPL as a "safe harbor" in a ratemaking principles proceeding and or as the basis for a complaint. The complaint filed by Calpine will be dismissed.

This does not mean Calpine's allegations are irrelevant. IPL has pending a ratemaking principles proceeding for a gas-fired plant in Mason City. This is the plant that IPL determined to build after completing the RFP process. In the ratemaking principles proceeding, identified as Docket No. RPU-02-6, Calpine may intervene and introduce evidence on the reasonableness of the alternative chosen by IPL. The bidding process is relevant in determining whether IPL has demonstrated it

has considered other sources of supply and the proposed supply is reasonable when compared to other feasible sources of supply.

The Board notes that in a letter filed March 29, 2002, IPL asked for a waiver of a portion of 199 IAC 40.2(1)"k." Because the rules were not effective, the Board cannot grant a waiver. If IPL conducts another RFP after May 8, 2002, it can ask for a waiver with respect to that RFP. In the alternative, IPL may file a petition for rulemaking to request that the rule be modified.

IT IS THEREFORE ORDERED:

1. The complaint filed by Calpine Corporation on May 10, 2002, is dismissed.
2. The request for waiver filed by Interstate Power and Light Company on March 29, 2002, is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 5th day of July, 2002.